

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

CIVIL ACTION
DOCKET NO. 06-CV-206-P-S

MAINE YACHT CENTER, INC.)	
)	
Plaintiff)	
)	
v.)	AMENDED ORDER
)	CONFIRMING SALE
)	OF VESSEL AND FOR
M/V KRISTIN K (O.N. 585492),)	DISBURSEMENT OF
her engines, machinery, equipment,)	SALE PROCEEDS
masts, sails, etc.,)	
)	
<i>in rem;</i>)	
)	
and)	
)	
GEORGE K. GARDNER, JR.,)	
)	
<i>in personam;</i>)	
)	
Defendants)	

Upon consideration of Plaintiff's Consented-To Motion for Confirmation of Sale and Disbursement of Proceeds, and after a thorough review of the pleadings and other supporting documents, the Court finds as follows:

1. This Court has jurisdiction pursuant to 28 U.S.C. §1333 and 46 U.S.C. §§31325 *et seq.*
2. The only other party to appear and defend and/or assert a claim in this action is Town and Country Federal Credit Union, which joins in this motion.
3. Pursuant to the Order of Sale dated March 20, 2007, a sale by public action of the M/V KRISTIN K (O.N. 585492), her respective engines, machinery, equipment,

etcetera, together with all additions, improvements and/or replacements to said vessel or her equipment and appurtenances, was conducted at 11:00 a.m. on Monday, April 23, 2007 at the Portland, Maine office of Maine Yacht Center, Inc.

4. Pursuant to the Order of Sale, Plaintiff caused notice of the sale of the vessel to be published in the Portland Press Herald on April 9, 11, 16 and 18, 2007.

5. In addition, Plaintiff served a copy of the Notice of Sale on Defendant, Claimant Town and Country Federal Credit Union, and their respective counsel.

6. On April 23, 2007, Dean Knightly, Deputy United States Marshal, conducted the sale of the vessel at Maine Yacht Center, 100 Kensington Street, Portland, Maine. At the conclusion of the bidding, Deputy Marshal Knightly declared Town and Country Federal Credit Union the winning bidder, subject to confirmation by the Court.

7. Pursuant 28 U.S.C. §1921(c)(1), the United States Marshal Service is entitled to a fee of 3 percent of the first one thousand dollars collected, and 1.5 percent of any excess over one thousand dollars. Given the sale price of \$55,000.00, the United States Marshal Service is entitled to a commission of \$840.00.

8. Pursuant to the Court's Order Appointing Substitute Custodian dated November 27, 2006, Plaintiff has at all relevant times acted as the custodian of the vessel and has billed the sum of \$4,881.85 in storage and preservation fees in connection with the vessel through the date of the public sale.

9. Town and Country Federal Credit Union asserts a claim pursuant to a first preferred ship mortgage executed on May 8, 1999 and filed with the U.S. Coast Guard National Vessel Documentation Center on May 20, 1999 in Book 99-91, Page 176 the stated amount of the said claim as of March 20, 2007 was as follows:

Principal:	\$73,258.14
Interest:	\$5,891.94
Late charges:	\$522.50
Per diem interest:	\$17.9633

Plaintiff acknowledges that the Credit Union's mortgage claim has priority over Plaintiff's lien claim.

10. Town and Country Federal Credit Union has paid the sum of \$55,000.00 to the United States Marshal Service pursuant to the Order of Sale.

11. The Court finds that Town and Country Federal Credit Union's bid of \$55,000.00 is fair, reasonable and adequate under all the circumstances.

12. The U.S. Marshal has now remitted the sale proceeds to the Clerk of the Court, after deducting his fees and expenses. Attached hereto as Exhibit A is the U.S. Marshal Service's Voucher and Schedule of Payments. The Marshal has added in Maine Yacht Center's \$1,000.00 deposit and then deducted the cost of insuring the vessel, its \$840.00 commission, and a \$20.00 fee for the bill of sale, as well as service fees of \$45.89.

13. The cost of insuring the vessel after its arrest is an *in custodia legis* expense.

14. The disbursements ordered by the Court should be altered to reflect the U.S. Marshal's deductions and additional expenses.

WHEREFORE, in light of the foregoing, the Court ORDERS, ADJUDGES and DECREES that the sale of the M/V KRISTIN (O.N. 585492), her engines, machinery, equipment, masts, sales, etc., together with all additions, improvements and/or replacements to said vessel or her equipment or appurtenances, to Town and Country

Federal Credit Union is CONFIRMED, and the United States Marshal is directed to execute and deliver a bill of sale to Town and Country Federal Credit Union, free and clear of all liens and encumbrances, in form satisfactory to the National Vessel Documentation Center for recording.

The Court further ORDERS that the following claims be allowed in the following amount:

Town and Country Federal Credit Union \$73,258.14, plus interest, late charges and attorneys' fees

which claim shall take priority over the judgment lien of Plaintiff Maine Yacht Center, Inc.

It is further ORDERED that the Clerk of this Court shall disburse the following sums:

- a. \$5,835.96 to Plaintiff for custodial fees;
- b. the balance of the sale proceeds to Town and Country Federal Credit Union.

DATED: May 22, 2007

/s/ George Z. Singal,
Chief U.S. District Judge